

ASBURY DICKINS.

[To accompany Bill S. No. 129.]

JUNE 16, 1860.

Mr. HUTCHINS, from the minority of the Committee of Claims, submitted the following

MINORITY REPORT:

The undersigned, being unable to agree with the majority of the committee in their recommendation of the passage of the Senate bill for the relief of Asbury Dickins, would respectfully submit to the House their reasons for their disagreement. Mr. Dickins claims compensation for services performed by him as Acting Secretary of the Treasury and as Acting Secretary of State. The following statement shows the items and the amount of his claim:

Statement showing the number of days which Asbury Dickins served as Acting Secretary of the Treasury and as Acting Secretary of State, and the amount allowed therefor, at the rate of \$6,000 per annum; also the amount due him as chief clerk of the Treasury Department.

AS ACTING SECRETARY OF THE TREASURY.

From 24th April to 26th May, 1829, inclusive, 33 days...	\$543 95
From 18th October to 26th October, 1831, inclusive, 9 days	146 74
From 15th March to 30th March, 1832, inclusive, 16 days	263 73
From 1st October to 10th October, 1832, inclusive, 10 days	163 04
From 8th November to 17th November, 1832, inclusive, 10 days	163 04
From 6th May to 9th May, 1833, inclusive, 4 days	65 93
From 29th May to 31st May, 1833, inclusive, 3 days	49 45
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	1,395 88
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AS ACTING SECRETARY OF STATE.

From 10th August to 24th August, 1833, inclusive, 15 days	\$244 57
From 11th November to 15th November, 1833, inclusive, 5 days	81 52
From 11th October to 31st October, 1834, inclusive, 21 days	342 39

From 2d May to 13th June, 1835, inclusive, 43 days.....	\$708 79
From 6th July to 13th July, 1835, inclusive, 8 days.....	130 43
From 31st August to 8th September, 1835, inclusive, 9 days.....	146 74
From 28th September to 19th October, 1835, inclusive, 22 days.....	358 70
From 19th May to 23d May, 1836, inclusive, 5 days.....	82 41
From 7th July to 29th August, 1836, inclusive, 54 days..	880 43
From 27th September to 9th November, 1836, inclusive, 44 days.....	717 39
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	3,693 37
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AS CHIEF CLERK OF THE TREASURY DEPARTMENT.

From 21st June to 7th August, 1831.....	\$261 46
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From the foregoing statements it appears that there is due to Asbury Dickins—

For his salary as Acting Secretary of the Treasury for various periods during the years 1829, 1831, 1832, and 1833.....	\$1,395 88
For salary as Acting Secretary of State for various periods during the years 1833, 1834, 1835, and 1836.....	3,693 37
For salary as chief clerk of the Treasury Department, from 2st June to 7th August, 1831.....	261 46
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	5,350 71
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Mr. Dickins, at the times he performed services as Acting Secretary of the Treasury and Acting Secretary of State, was chief clerk in those departments, and he claims his salary as chief clerk and the salary allowed the Secretary of State and the Secretary of the Treasury during the times he was thus Acting Secretary. The Court of Claims allowed this, and reported a bill giving him both salaries. The Senate bill allows him the highest salary, and deducts his salary as chief clerk; and a majority of the Committee of Claims of this House, of the last Congress, adopted the Senate's rule of compensation, and recommended the passage of the Senate bill. Mr. Moore, of Alabama, at the last session, made a minority report disallowing the claim, which was signed by three members of the committee, to wit, Mr. Moore, Mr. Taylor, and Mr. Kunkel.

To provide for the temporary absence from the seat of government and sickness of the heads of departments, Congress, on the 8th day of May, 1792, passed "An act making alterations in the Treasury and War Departments," the 8th section of which reads as follows:

"And be it further enacted, That in the case of death, absence from

the seat of government, or sickness of the Secretary of State, Secretary of the Treasury, or the Secretary of the War Department, or of any officer of either of the said departments whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability by sickness shall cease.”—(1 Stat. at Large, 281.)

Mr. Dickins, being chief clerk in the State and Treasury Departments at the times mentioned in the foregoing statement, was authorized by the President of the United States, under the authority of said 8th section, to discharge, *temporarily*, the duties of the Secretaries of those departments, the Court of Claims allowed both salaries (the salary of chief clerk and the salary of Secretary) on the ground that Mr. Dickins, during the periods named, held two offices, and discharged the duties of each.

Says the Court: “It appears to us that the petition shows that the claimant, at the time he performed the duties of Secretary of the Treasury, held an office separate from his office of chief clerk, and that he also held an office separate from that of chief clerk at the times he performed the duties of Secretary of State. He *held two offices at those times*, and there was no law to prohibit him from doing so.”

Is this position correct? Did Mr. Dickins, in fact, hold two offices—the office of chief clerk and Secretary? A minority of your committee think not. By the 8th section of the act above referred to the President is not authorized to *appoint* a Secretary in the place of the functionary who may be temporarily absent or sick. The language of the section is, “It shall be lawful for the President of the United States, in case he shall think it necessary, to *authorize* any person or persons, at his discretion, to perform the duties of said respective offices until a successor be appointed, or until such absence or inability by sickness shall cease.” Mr. Dickins was not *appointed to the office of Secretary*, for another person was holding the office and receiving the salary. He was authorized to sign papers as Acting Secretary. He was not a cabinet officer, and had not the whole responsibility of the office; and while he was discharging the duties of an Acting Secretary, some clerk under him was discharging his duties as chief clerk. With a view to ascertain as near as possible the true position of a person thus temporarily authorized to discharge the duties of the head of a department, your committee, through its chairman, addressed letters to the Secretary of State and the Secretary of the Treasury for information on that point. The letters received in reply from Mr. Cass and Mr. Cobb are herewith appended.

Mr. Cass says: “I am not aware that the time spent in the public service by the chief clerk of this department, acting as Secretary, under the authority of the President, in the absence of the principal, is thereby necessarily increased. He encounters a much greater responsibility, and the duties which devolve upon him are more varied

and often more difficult of solution. But I suppose that whenever a chief clerk is placed in this situation, some other clerk is always assigned to take charge of the duties of the office he temporarily leaves vacant."

Mr. Cobb says: "In the ordinary course of public business in this department, according to my understanding and belief, when any subordinate officer of the department has held the appointment of Acting Secretary, the duties of which called him away from the discharge of the appropriate functions of his desk, he would, as a matter of course, have called upon some other suitable officer to discharge such functions for the time, which would lead to a temporary redistribution of duty among the several officers of the department, more or less extensive as the occasion might require, so that the current transactions might be carried on without delay or inconvenience to the public service. According to my understanding and belief, there would, therefore, have been no occasion for any chief clerk holding the acting appointment of Secretary of the Treasury at any time to have been employed beyond the usual official hours, unless special emergencies, such as have been hereinbefore alluded to, may have occurred, in regard to which, anterior to my entering on my official duties here, I have no specific information."

These letters disclose a state of things in the departments which a minority of your committee supposed to exist before the information contained in them was received. It appears that the ground for compensation is not based upon any additional time or labor expended in the public service, but upon the fiction that the applicant held two offices and discharged the duties of each.

It will be noticed that there is no claim in the petition that any additional labor was imposed upon the claimant in consequence of the temporary authority conferred upon him under the authority above referred to, nor is there anything in the proof to that effect.

The assumption that Mr. Dickins held two offices and discharged the duties of each is a legal fiction, and has no foundation in fact. From the papers and evidence in this case, it appears that no chief clerk in any department of the government, up to the year 184 , when Mr. Young received compensation for services similar to those for which Mr. Dickins now claims the salary of the head of the department, and also his salary as chief clerk. It is apparent that Mr. Dickins, at the time he was discharging the duties of Acting Secretary, did not understand that he was to receive, or was entitled to receive, compensation therefor, excepting his salary as chief clerk. He made no claim on the government for more than twenty years after the last item of service was performed. The reason why he presented his claim is thus frankly stated by him in his petition:

"Your memorialist further states that, for the performance of similar duties, under similar circumstances, and under similar appointments, his successor as chief clerk of the Treasury Department, Mr. Young, received a compensation equal to the salary of the head of the department, deducting therefrom the amount received by him as chief clerk; that this being the first occasion, as your memorialist believes, of such

compensation being claimed by a chief clerk, the subject was carefully examined at the Treasury Department, and the allowance was made by the accounting officers, Mr. McCulloh being Comptroller, and Mr. Collins Auditor, with the deliberate sanction of the head of the department, Mr. Walker; and the like allowance was subsequently made to one of your memorialist's successors as chief clerk of the Department of State, Mr. Fletcher Webster, under similar circumstances; that your memorialist having, sometime afterwards, heard of these allowances, and considering his claim to a like allowance to have been thus authoritatively settled, presented the same, with the proper vouchers, to the Auditor, Mr. Collins, who allowed and passed it; but your memorialist, having understood that there was then no appropriation out of which it could be paid, did not urge it before the Comptroller, at that time Mr. Whittlesey, and has since been informed that it was by him disallowed. It is under these circumstances that your memorialist submits the same to Congress."

It may be true that Mr. Dickins's claim for compensation is as just as were the claims of Mr. Young and Mr. Webster; and if any one should be paid for similar services, Mr. Dickins should be, for he has been a faithful public officer, no suspicions of unfaithfulness, malfeasance, or misfeasance in office having been entertained concerning him. In the opinion of a minority of your committee, the allowance to Mr. Young and to Mr. Webster was wrong, and it should not be made a precedent for the payment of Mr. Dickins or any one else for similar services.

It has been the habit of the departments since the organization of the government, during the temporary absence of the heads thereof, to detail the chief clerk to discharge the duties of Acting Secretary, and, as a matter of course, subordinate clerks discharged during the interim the duties of chief clerk, and neither received or expected to receive extra compensation therefor. In the language of Mr. Cobb, "it led to a temporary redistribution of duty among the several offices of the department, more or less extensive, as the occasion might require," and the clerks in the departments, including the chief clerk, accepted those offices at the compensation allowed, with the understanding that such "temporary redistribution of duty" would pertain to the office, and would not entitle them to extra compensation. There has been no difficulty in employing clerks at the salaries allowed by law with this additional responsibility occasionally thrown upon them, and no complaint was made till the allowance to Mr. Young and Mr. Webster; and since then similar applications have been numerous, as the cases before your committee will attest.

If the judgment of the Court of Claims and the action of the Senate are to stand as the judgment of Congress, the applications for similar relief will be more numerous still, and the offices in your government will be duplicated, from the chiefs of departments to the lowest employés. Is Congress prepared to inaugurate that policy? If the chief clerk in a department is entitled to the salary of his chief because he discharges, temporarily, some of his duties, then the clerk under *him*, who fills for the time being his place, is entitled to the

pay of chief clerk; and so on, from the highest to the lowest grade of service. If Congress should regard the claim legal and just, as it would by passing the Senate bill for the relief of the claimant in this case, it would be better to pass a general law allowing pay to all parties coming within the principle established, for that would avoid much special and private legislation.

The policy of the government heretofore has been against the payment of this and similar claims. It is believed that no such claim has ever received the sanction of Congress.

A similar claim was before the Committee of Claims of this House during the first session of the thirty-fourth Congress, and that committee, through its chairman, made a unanimous report against the claim.—(See case of William S. Derrick, report No. 298.) The case of this person, by his legal representatives, is now before your committee, and the Senate and Court of Claims report a bill for their relief. The exigencies of the public service are such that occasionally the heads of departments and clerks must perform duty not strictly pertaining to their ordinary duties. This may be caused by the temporary disability of a particular officer to discharge the duties of his desk or bureau, and by the demands of the public service in calls upon the departments for information upon subjects which Congress and other departments of the government may need, to enable them to act intelligently upon matters before them for consideration. In such cases a little additional labor and responsibility may be thrown upon government employes, and the question for Congress to settle is, shall this additional labor and responsibility entitle the officers to extra compensation, and result in a duplication of the offices in the public service? Congress, as early as 1818, undertook to provide against this. On the 26th day of April, 1818, Congress passed an act increasing the compensation of the clerks in all of the departments, the last section of which contains this proviso: "And no higher or other compensation shall be made to any clerk in the said departments and offices than is authorized by this act."

The undersigned have no doubt but this proviso was intended by Congress to provide against the allowance of compensation in cases similar to the one under consideration. This act was in force when Mr. Dickins performed the services for which he now claims compensation. A minority of your committee are of opinion that this claim is against the spirit, if not the letter, of this act. Notwithstanding this proviso in the act of 1818, claims were made by officers against the government for compensation for extra services performed; and Congress, to put a stop to this practice, in the general appropriation bill for the year 1839, inserted this proviso:

"That no officer in any branch of the public service, or any person whose salary or whose pay or emoluments is or are fixed by law and regulations, shall receive any extra allowance or compensation in any form whatever for the disbursements of public money, or the performance of any other service, unless said extra allowance or compensation be authorized by law."—(See Statutes at Large, volume 5, page 349.)

In the bill for the support of the army and Military Academy for 1842 it was provided:

"That no officer in any branch of the public service, or any other person whose salary, pay, or emolument is or are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, *in any form whatever*, for the disbursements of public money, or for any other service or duty whatsoever, unless the same shall be authorized by law, and the appropriation therefor explicitly set forth that it is for such additional pay, extra allowance, or compensation."—(Statutes at Large, volume 5, page 510.)

On the 26th day of August, 1842, Congress passed an act "legalizing and making appropriations for such necessary objects as have been usually included in general appropriation bills without authority of law, and to fix and provide for certain incidental expenses of the departments and offices of the government, and for other purposes." (See Statutes at Large, volume 5, page 525.)

The last clause of the 11th section of this act reads as follows:

"And no greater allowance shall be made to any such clerk, or other person, that is or may be authorized by law, except to watchmen and messengers, for any labor or service required of them beyond the particular duties of their respective stations, rendered at such times as does not interfere with the performance of their regular duties."

That no doubt might be entertained as to the intention of Congress in a case similar to the one, now under consideration, section 12 of this act provided: "That no allowance or compensation shall be made to any clerk or other officer by reason of the discharge of duties which belong to any other clerk or officer in the same or other department, and no allowance or compensation shall be made for any extra services whatever which any clerk or other officer may be required to perform." It will be instructive to consider carefully the language of these laws from 1818 to 1842. They unmistakably had the object in view to protect the public treasury from the "irrepressible" tendency of official humanity to fasten itself upon it in the shape of extra compensation for imaginary or real services performed.

The language is more and more explicit and guarded. The spirit of the law of 1818 is the same as the spirit of the laws of 1839 and 1842, but its intention was more easily evaded. The tendencies of the times required that the legal net-work of legislation should be made finer and finer to protect the public treasury from the official dignitaries that flit about it. The Court of Claims, in relation to the bearing of the acts of 1839 and 1842 upon the case under consideration, says: "It is only necessary to observe, with respect to those acts, that they were not in force when the services sued for were rendered." In reply to this, a minority of your committee would state, 1st, that the act of 1818, above referred to, was in force when the services, for which Mr. Dickins now claims compensation, were rendered, and that the judgment of the Court of Claims is against the obvious intent of this act.

2d. That when these services were performed there was no law

allowing compensation therefor, except the salary which Mr. Dickins received as chief clerk.

3d. That when these services were performed there was no understanding or agreement between Mr. Dickins and the government that he was to receive extra compensation therefor.

The majority of the committee refer to the action of a Committee of Claims of this House, in the case of William H. Bell, as an authority to sustain their report.—(See 24th Congress, 1st session, report No. 381.) Captain William H. Bell, being an officer of the government, acted as assistant engineer at the Delaware breakwater from the 4th of April to the 24th of July, 1831, making 111 days, for which he claimed \$1 25 per day for his services. The committee allowed this claim on the ground that the applicant held two offices and discharged the duties of each, which is not the case under consideration; but the committee say "that an increase of duty or labor, strictly in discharge of the offices he holds, should not be a ground for extra pay." The bill reported by this committee was indefinitely postponed by the Senate in the 25th Congress.

A minority of your committee do not, therefore, regard this as an authority for the allowance of Mr. Dickins's claim.

The undersigned regard this as an important case, and one that Congress should not act upon without the most careful consideration, as the passage of the Senate bill will be an authoritative recognition of the legality and justness of all similar claims. We would therefore recommend that the bill do not pass, and the importance of the principle involved is our only apology for troubling the House with this report.

JOHN HUTCHINS.

C. B. HOARD.

ALFRED ELY.

SYDENHAM MOORE.

JOHN A. McCLERNAND.

DEPARTMENT OF STATE,
Washington, May 24, 1860.

SIR: In answer to your letter of the 21st instant, I have the honor to inform you that I am not aware that the time spent in the public service by the chief clerk of this department, acting as Secretary, under the authority of the President, in the absence of the principal, is thereby necessarily increased. He encounters a much greater responsibility, and the duties which devolve upon him are more varied and often more difficult of solution. But I suppose that whenever a chief clerk is placed in this situation, some other clerk is always assigned to take charge of the duties of the office he temporarily leaves vacant.

As to the time employed in the public service in the various executive departments, the usage which regulates it under ordinary circumstances is no doubt well known to the committee. I consider that regulation, however, applicable only to the usual business of the departments, and I look upon it to be the duty of all persons employed therein to perform such additional labor as may be found necessary to

meet any exigency in the public service; and I understand such to be the received practice.

I have the honor to be, sir, your obedient servant,
LEWIS CASS.

Hon. M. W. TAPPAN,
Chairman Committee of Claims, House of Representatives.

TREASURY DEPARTMENT, May 22, 1860.

SIR: I have the honor to acknowledge your letter of the 21st instant, stating that several applications are before your committee for extra compensation to parties who have held acting appointments as Secretary of the Treasury during the temporary absence or sickness of the Secretary, and that "the committee desire to know how much time a chief clerk would be ordinarily employed beyond the usual official hours in consequence of holding such appointment, and what amount of additional (labor?) it imposes."

In reply, I beg leave to suggest that it is not in my power to furnish any direct information in regard to what may have been done at any particular time by any chief clerk who may have held an acting appointment as Secretary of the Treasury out of the usual official hours in consequence of such appointment. The ordinary official duties of this department are generally performed within the established official hours, during which only the public offices are kept open. Upon special emergencies the Secretary, as well as any other officers of the department whose services may be necessary, are sometimes required to bestow their attention upon official duties beyond the established official hours.

In the ordinary course of public business of this department, according to my understanding and belief, when any subordinate officer of the department has held the appointment of Acting Secretary, the duties of which called him away from the discharge of the appropriate functions of his desk, he would, as a matter of course, have called upon some other suitable officer to discharge such functions for the time, which would lead to a temporary redistribution of duty among the several officers of the department, more or less extensive, as the occasion might require, so that the current transactions might be carried on without delay or inconvenience to the public service. According to my understanding and belief, there would therefore have been no occasion for any chief clerk holding the acting appointment of Secretary of the Treasury at any time to have been employed beyond the usual official hours, unless special emergencies such as have been hereinbefore alluded to may have occurred, in regard to which anterior to my entering on my official duties here I have no specific information.

Very respectfully, your obedient servant,
HOWELL COBB,
Secretary of the Treasury.

Hon. M. W. TAPPAN,
Chairman of Committee of Claims, House of Representatives.
H. Rep. Com. 646—2

